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Eldar Sarajlić

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University of Edinburgh, School of Law
The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia
(CITSEE)

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Citizenship and Social Justice in Croatia, Bosnia and Herzegovina and Serbia

Eldar Sarajlić¹

Abstract

The paper focuses on the ways that distribution of social resources is framed by particular citizenship policies and implicit views of justice in Croatia, Bosnia and Herzegovina, and Serbia, the three successor states of the former socialist federation of Yugoslavia. It inquires about the nature of the relation between citizenship and social resource distributive policies, and assesses their justifiability and grounding in moral and political norms. By looking at the overlapping citizenship regimes that characterize relations among these successor states, it tries to determine the ways in which they do or do not conform to particular principles of social justice.

Keywords:

Citizenship, distribution, social justice, Croatia, Bosnia and Herzegovina, Serbia

1. Introduction

The relationship between citizenship and (social) justice has been long recognized in the literature and given deserved analytical attention. It has been approached, however, from different directions. Political philosophy has looked at it while trying to tackle the philosophical and somewhat abstract question of the scope of justice – trying to determine to whom we owe justice and what are the foundations of just relations between individuals and groups in the world.² Recent normative accounts have also analyzed rights and duties related to different dimensions of citizenship and suggested various theoretical proposals.³ Many empirical disciplines have tried to describe and discuss linkages between citizenship and other forms of social and political distribution in different parts of the world, making no normative suggestions, but trying to outline and understand the existing practices. While all of these are worthwhile efforts, what seems to be missing in the story about citizenship and social justice is an interdisciplinary account, one that will, while focusing on a particular set of empirical cases, combine insights from different disciplines and approach the relationship from multiple perspectives. One of the advantages of such an approach would be that it could not only describe and analyze one particular

¹ Eldar Sarajlić is a PhD candidate at the Central European University in Budapest, and an Associate Researcher for the CITSEE project, School of Law, University of Edinburgh; email: sarajlic_eldar@ceu-budapest.edu.

² Arash Abizadeh, 'Cooperation, Pervasive Impact and Coercion: On the Scope (Not Site) of Distributive Justice', *Philosophy and Public Affairs*, 2007, Vol. 35, No. 4, p. 319.

³ For example, see Rainer Bauböck, 'The Rights and Duties of External Citizenship', 2009, *Citizenship Studies*, Vol. 13, No. 5, pp. 475-499.

pattern of the relationship using comparative categories of contemporary political science, but also prescribe a normative solution based on a distinct understanding of what justice is, or should be. Such an approach could thus be both analytical and substantive, combining philosophical knowledge of justice and empirical insight into different forms of social and political organization in a novel way.

This paper attempts to provide preliminary steps towards such an account. It aims to utilize a particular understanding of justice to say something more about the relation between citizenship and social distribution in one part of the contemporary world, the triangle between Croatia, Bosnia and Herzegovina, and Serbia, three successor states of the former socialist federation of Yugoslavia. I will ask not only about the nature of existing relations and policies but also about their justifiability and grounding in particular moral and political norms. More precisely, I will focus on the ways distribution of social resources is framed by particular citizenship (and partly quasi-citizenship) policies and implicit views of justice in Croatia, Bosnia and Herzegovina, and Serbia. By looking at the overlapping citizenship regimes that characterize relations among these successor states, I will try to determine the ways in which they do or do not conform to particular principles of social justice.

This topic, framed in this political, social and cultural context, is both scholarly relevant and interesting for several reasons. First, from a theoretical point of view, focusing on the social aspects of citizenship is of crucial importance for understanding the substantive meaning and practical implications of citizenship as a concept. Echoing T.H. Marshall's emphasis on social citizenship as a gauge of equality, this paper examines links between citizenship and distributive policies in order to better understand different forms of (in)equality in the post-Yugoslav space and propose a new perspective for normative assessment.

Second, from a practical point of view, given their common social and economic heritage, the question of justice in social distribution resonates strongly in the context of the post-Yugoslav states. If they had shared a common contributive pool of both social and natural resources, what is, in terms of justice, left after the dissolution of the federal state? Has the process of state succession and re-distribution of former federal property closed any further considerations of justice?

Third, given the existing pattern of overlapping citizenship regimes, which feed different cross-border distributive practices, the question of the justifiability of such practices comes to the fore. If the forms of social justice and reciprocity are still firmly anchored within the structures of a territorially defined nation-state, while citizenship policies go beyond such strict frameworks, what can we make of such a discrepancy? What kind of understanding of justice lies in the background of such transnational practices?

The ultimate claim I wish to defend throughout this paper is that the existing socio-distributive practices in the parts of the post-Yugoslav space on which this paper focuses violate the main principles of social justice: non-arbitrariness and reciprocity. But, before I extend and elaborate that claim, I will try to describe and analyze the existing practices of social distribution in relation to citizenship and the

implicit view of social justice that serves as their justificatory framework. Only after I describe the practices, will I try to prescribe a theory for their normative appraisal. By making such a clear-cut distinction between descriptive and prescriptive parts of the paper, I intend to enable a reading that does not necessarily need to adopt my subjective view of justice. Being fully aware that normative views of justice and its requirements are plentiful and often hard to reconcile, I wish to leave sufficient space for readers from other perspectives to grasp and appraise the multitude of linkages between citizenship and social distribution in the post-Yugoslav space.

The argument of this paper will be divided into the following sections. First, I will make a short outline of a theory of (social) justice that informs my underlying assumptions about the justifiability of certain social and political practices. Second, I will outline the question of the scope of justice and bring it into a more direct relation with citizenship. Only after clearing the main conceptual ground, will I delve into the empirical world of Croatia, Bosnia and Herzegovina (BiH), and Serbia and try to map the relations between citizenship and distribution of different social resources. After mapping and examining different patterns and types of relationship, I will try to offer a normative appraisal of such practices and give a prescriptive value-based theory of their justifiability.

2. Social Justice and Its Scope

In terms of the normative framework this paper implies and puts into relation with the empirical indicators, two elements are important. First, the minimalist definition of justice as non-arbitrariness, and second, the relation of reciprocity as the key defining tool for establishing the scope of social justice – i.e. the range of individuals to be included in a social distribution based on the conception of justice. In this section, I will describe these two elements.

2.1. Justice as Non-Arbitrariness

Theorizing justice needs to take account of the sheer diversity of different theories and definitions of justice. As in most other fields of humanities and social science, there is no clear consensus among political theorists and philosophers on what justice is, or should be. The theories are very often radically opposed to one another, leaving those who ponder its definition and meaning to choose theories that seem plausible or desirable, while rejecting and excluding others. For example, one can hardly be a sympathizer of Ronald Dworkin's egalitarianism as a basis of justice (which implies that all individuals need to be provided with appropriate amounts of resources so to be equal in the starting points of their lives⁴), and also think that Robert Nozick's

⁴ See Ronald Dworkin, 'Equality of Resources', in *Sovereign Virtue: The Theory and Practice of Equality*, Harvard University Press, 2002, pp. 65-120.

entitlement theory of justice⁵ (under which individuals are entitled to their property if they have gotten possession of it through an initial acquisition or exchange that violated nobody's rights) is true and valid. Similarly, holding John Rawls' theory of justice to be correct (which, among other things, states that inequalities are justified only if they benefit the poorest and least advantaged⁶) makes one reject most Lockean⁷ types of theories of justice that emphasize the primacy of private property and a free-market economy in defining what should be considered as just.

Given such a diversity of theories of justice, it seems very difficult to come up with a minimalist working definition of justice. However, what seems common to all of these theories is the view that justice represents a system of relations and distributions that is meaningful beyond mere arbitrariness. Though differing in the ways non-arbitrariness is established as the benchmark of their theories of justice, authors as different as Rawls and Nozick would most certainly agree that rules of social justice must not be arbitrary, but instead follow particular laws established by principles of, say, desert or need. The extent to which the value of non-arbitrariness defines particular theories of justice will also differ, from minimalists, such as Nozick, to maximalists such as G.A. Cohen⁸, or luck egalitarians⁹ for whom justice is all about rendering arbitrary advantages based on sheer luck irrelevant for distributions of social benefits. But, one can say that what characterizes most contemporary theories of social justice is (at least) a minimalist view of justice as non-arbitrariness, a system of values and arguments aimed at justifying a particular social distribution.

In order to make a normative appraisal of the social distributions attached to particular citizenship policies in post-Yugoslav space, this paper will adopt the minimalist view of justice as non-arbitrariness as the basis of its normative critique. Hoping such a view will enable the broadest possible understanding of the problem with citizenship and social justice in this part of the world and generate agreement on potential solutions, I will leave substantial views of justice aside for now and focus on two things. First, I will discuss relations between justice (as any system of rules) and citizenship in theory, and second, I will map its practical manifestations in the contemporary post-Yugoslav space. Only after I finish with these two tasks, will I return to normative issues and outline how my minimalist definition of justice corresponds with the reality of post-Yugoslav citizenship regimes.

⁵ See Robert Nozick, 'The Entitlement Theory', in *Anarchy, State, Utopia*, Blackwell: Oxford, 1974. pp. 150-178.

⁶ See John Rawls, *A Theory of Justice*, Harvard University Press, 1971.

⁷ See John Locke, *Two Treatises of Government*, Yale University Press: New Haven, 2003, pp. 100-211.

⁸ See G.A. Cohen, 'On the Currency of Egalitarian Justice', in *Ethics*, July 1989, pp. 906-944.

⁹ See Elisabeth Anderson, 'What is the Point of Equality?' in *Ethics*, No. 109, January 1999, pp. 287-337.

2.2. Citizenship and (Social) Justice: The Scope

One of the important questions any theory of justice needs to provide an answer to is the question of scope. Basically, this question asks to whom we owe justice, or where are the boundaries of relations between people that demand considerations of justice, including requirements of distribution. Influenced largely by Rawls' theory of justice and his views about this question in *The Law of Peoples*¹⁰, contemporary discussions of justice have predominantly sought to understand it within the categories and boundaries of the nation-state. For Rawls and Law-of-Peoples Rawlsians, justice is primarily a relation between individuals within particular (nation-)states, while global justice is a secondary relation that involves states as main agents, not individuals. In other words, the (distributive and other) obligations we have towards our co-citizens are larger and more meaningful than the ones we may have towards citizens of other states.

A number of reasons have been offered in support of such a view. The fundamental one, argued by (Rawls and) Rawlsians, is related to the question of the site of justice – the domain at which requirements of justice are specified and put into practice. For them, the site which determines who is included in the set of duties, obligations and entitlements of justice is the so called “basic structure”, which implies an institutional system of rules, laws and practices that encircle a particular group of people into reciprocal, cooperative and coercive relations that have a profound effect on the character of their lives. By specifying that “basic structure” conditions relations of distributive justice, Rawls and his followers have drawn the conclusion that since there is no “basic structure” beyond the boundaries of nation-states, there is no global (distributive) justice that would require transnational relations of duty and obligation between individuals from different states.¹¹

However, these views have been exposed to a philosophical critique that has cast a shadow on the exclusivity of nationalized justice, or on understanding distributive justice as primarily a relation between co-citizens in nation-states. A number of authors have suggested that even if we take the “basic structure” as the main site of justice, this still does not necessarily commit us to limit the scope of justice to nation-states, because a “basic structure” simply is a transnational phenomenon. Arash Abizadeh has recently mapped three distinct ways to understand what are the institutions comprising a society's basic structure. According to him,

the basic structure may be said to comprise (1) the institutions that determine and regulate the fundamental terms of social cooperation; (2) the institutions

¹⁰ John Rawls, *The Law of Peoples*, Harvard University Press, 1999.

¹¹ For overview and discussion, see Jon Mandle, ‘Distributive Justice at Home and Abroad’, in Thomas Christiano and John Christman, *Contemporary Debates in Political Philosophy*, Blackwell: London, 2009, pp. 409-422.

that have profound and pervasive impact upon persons' life chances; or (3) the institutions that subject persons to coercion.¹²

On all three grounds, Abizadeh suggests, there exist sufficient reasons to take the scope of justice to be global, rather than national. Simply, the institutions that regulate cooperation between people, have a pervasive impact on the quality of their lives and subject them to coercion already exist at the global level, forcing us to recognize the need to theorize and practice distributive justice beyond the boundaries of the nation state. On this reading, the degree to which particular institutions do regulate cooperation between individuals living in different states, have a pervasive impact over them and exercise some form of coercion indicates the need to regulate distributions of resources between these individuals, regardless of their place of residence or citizenship status. National boundaries, in other words, do not necessarily limit considerations of justice, nor determine the scope of obligations we owe to each other, irrespective of our contingent location in the world. Instead, it is the relation of reciprocity that exists between particular individuals and groups of people that should determine who ought to be included in the schemes of social distribution.

This criticism of nationalized justice notwithstanding, the majority of distributive practices in the contemporary world are still bound by the limits established for the world of nation-states. Though commerce and economic exchange have become global, the fruits of it in terms of social resources accumulated through institutional regulation have remained enclosed almost exclusively within the distributive practices of nation-states.

However, the notion of the national boundary has not remained solely determined through geography. With the withering away of the importance of territory for the nationalizing projects of nation-states, citizenship became a new tool to conceptualize the boundary of national communities and justify states' involvement beyond their internationally recognized geographical borders. As a new political tool of nationalizing states, citizenship policies and practices have also affected the ways distributive practices within these boundaries are shaped, practiced and justified. In the next section, I will focus on the three central post-Yugoslav states in which citizenship regimes transcend state boundaries and thus trigger new considerations of social justice and distribution of social resources. Only after this system is described and analyzed, will I venture into its normative appraisal based on notions of non-arbitrariness and reciprocity.

¹² Arash Abizadeh, 'Cooperation, Pervasive Impact and Coercion: On the Scope (Not Site) of Distributive Justice', *Philosophy and Public Affairs*, 2007, Vol. 35, No. 4, p. 319.

3. Post-territorial Citizenship in Post-Yugoslav Space

3.1. Overlapping Citizenship Regimes

If one could talk about some sort of post-Yugoslav 'constitutional space', the phenomenon of overlapping citizenship regimes would most certainly be one of its defining features. Established as a tool for envisioning and conceptualizing national bodies of the nascent national states in the aftermath of Yugoslavia's collapse, the system of overlapping citizenship regimes represents an *institutional* marker of national communities that goes beyond the given boundaries of former Yugoslav republics. It denotes the existence of two or more neighbouring national citizenship regimes on a particular territory, whose primary justification lies in the concept of *ethnicity*. Given that it appears in regions and states with ethnically mixed populations, prevalent especially among groups living adjacent to state boundaries, it represents a phenomenon of contested *sovereignty* and post-territorial politics. In light of recent research on the topic,¹³ one may even say that it represents a new form of nationalism - post-territorial nationalism - focused strategically at winning over a particular population rather than, after some previous attempts had failed, a particular territory.¹⁴

Thus, the emergence of the overlapping citizenship regimes, not only in the post-Yugoslav space but also in Eastern Europe in general, is an indicator of a new form of nationalist politics, in which the strategic emphasis shifts from territory to population. Given that territorial claims on behalf of particular national communities against others have been delegitimized by the existing global order and geopolitical relations of power, it is no surprise that nationalizing projects of some nation-states in the region have sought to find another tool by which to acquire a broader regional clout.

In the post-Yugoslav region, the practice is most prevalent in the triangle of states consisting of Croatia, Bosnia and Herzegovina, and Serbia. Being the country with an ethnically mixed population, inhabited by Bosniaks, Croats and Serbs and other smaller groups, Bosnia and Herzegovina is the most visible terrain on which the practice of overlapping citizenship regimes is exercised. Given such a constellation, most empirical references and examples will be drawn from the relationship between these states and their citizenship regimes.

The genesis of the current overlapping practices derives from events and acts occurring in the 1990s. It all started soon after both Croatia and Bosnia won independence from the rump Yugoslavia dominated by Serbia. By introducing the

¹³ See Francesco Ragazzi and Kristina Balalovska, 'Diaspora Politics and Post-Territorial Citizenship in Croatia, Serbia and Macedonia', *CITSEE Working Paper Series*, 2011/18, University of Edinburgh, School of Law.

¹⁴ However, this does not mean that claims over certain territories, inhabited by a particular population, are abandoned in principle.

new citizenship law in 1991¹⁵, Croatia enabled acquisition of citizenship for ethnic Croats not residing in Croatia at the moment of the law's enactment. Among the targets of such provisions were Croats in the near neighbourhood, primarily in Bosnia and Herzegovina, whose numbers amounted to 760,000. Some estimates say that the majority of Bosnian Croats who had not permanently left the country during wartime, together with up to an additional 200,000 ethnic non-Croats who also applied, utilized the provisions of article 16 of the law and acquired Croatian citizenship. At the time of writing, more than 800,000 originally Bosnian citizens, out of an estimated 4.3 million in 1991, are holders of Croatian citizenship, which, provided that they reside in Bosnia and Herzegovina, makes almost a quarter of its population subject to the practice of overlapping citizenship regimes with the neighboring state of Croatia.

The overlap with the Serbian citizenship regime is significantly less prevalent for the moment for a number of reasons. First, from a practical side, the possibility for acquisition of Serbian citizenship for Bosnian citizens was introduced only recently, in 2004, so there has been less time for the practice of dual citizenship to take hold among Bosnian citizens. Second, the nature of the involvement of Serbia in the war in Bosnia and Herzegovina and the political strategy of the Milosevic-era political elite prevented Serbia in making its claims over Bosnia explicit. This was evident in the discrepancy between its military and political involvement in protecting Serb interests in Bosnia and Herzegovina, which included not only significant military assistance but also political patronage in the international arena, and the citizenship legislation from 1996 that prevented Serb refugees from Bosnia from acquiring the citizenship of what was then the Federal Republic of Yugoslavia (Serbia-Montenegro). However, given the ousting of the Milosevic government from power and the institutional changes that would reform the country and bring it to final dissolution (the separation of Montenegro and Serbia in 2006), things began to change. The 2004 and 2007 amendments to the Serbian Law on Citizenship, through articles 18 to 23, made it possible for ethnic Serbs, irrespective of their residence, to acquire Serbian citizenship.¹⁶ Soon after Montenegro seceded, leaving Serbia on its own, a law specifying relations of Serbia to Serbs in Diaspora and the immediate neighbourhood was also passed¹⁷, providing more legislative grounds for Serbs in Bosnia, Croatia, Montenegro, Romania, Slovenia, Albania, and Hungary to acquire Serbian citizenship and maintain links with their 'national homeland'.

¹⁵ See more details in Viktor Koska, 'The Evolution of the Croatian Citizenship Regime: From Independence to EU Integration, *CITSEE Working Paper*, 2011/15, University of Edinburgh, School of Law.

¹⁶ For more details, see Nenad Rava, 'Serbia: Elusive Citizenship in an Elusive Nation-State', *CITSEE Working Paper*, 2010/08, University of Edinburgh, School of Law. Also, Jelena Vasiljevic, 'Citizenship and Belonging in Serbia: In Crossfire of Changing Nationhood Narratives', *CITSEE Working Paper*, 2011/17, University of Edinburgh, School of Law.

¹⁷ Ragazzi and Balalovska, p. 14.

There is some comparable overlap of citizenship regimes between other Yugoslav successor states, such as in the cases of Serbia and Kosovo, or Serbia and Montenegro. However, although we can see similar trends in relations between other countries, this paper focuses only on the Dayton triangle of countries because they share a distinct legal and institutional space (i.e. space of law¹⁸) that directly bears upon not only the institutional legacy of former Yugoslavia, with its mix of administrative (republican) divisions and symbolic (national) constituencies as fundamental building blocks of its constitutional order, but also an internationally recognized peace treaty, which links the countries in a formal and substantive way.

3.2. Ethnic Justice

The phenomenon of overlapping citizenship regimes in the post-Yugoslavia states may indicate the ways the main political actors in these states have conceptualized the question of the scope of justice. Although post-territorial and transcending geographic and administrative boundaries of the emergent nation-states, the scope of justice manifested by post-Yugoslav policies of overlapping citizenship regimes is predominantly narrow and exclusive, primarily because it is ethnic in nature: ethnicity is used as the main defining concept for drawing the boundary of the community of individuals to whom justice is owed, though other elements played a role as well, such as the legal continuity with previous political and administrative practices. This implies that, from such a perspective, territorial and reciprocal principles for defining the scope of persons included in relations of duty and obligation are of a lesser ideological (and consequently political) relevance. What ultimately matters in defining to whom we owe justice, according to this view, is the ethnic origin of the individuals or groups in question, not their formal citizenship status, place of residence, reciprocal relation, “stakeholdership” and circumstances of life,¹⁹ or any other principle that may have been used to define the scope of justice.

From the perspective of analytic political philosophy, this is a novel phenomenon. It provides an answer to the scope question in a way that differs both from traditional, territorially-defined nation-state conceptions of justice but also from the alternative ones, which try to conceive of the scope of justice through some forms of transnational reciprocal relations, from cooperation, pervasive impact to coercion. According to ethnic visions of the scope of justice, none of these seem to matter, since ethnicity is a concept that does not necessarily involve cooperative forms of relation. The only relevant ground that renders the relationship between state institutions and individuals of relevant ethnic origin meaningful in a justificatory sense is cultural.

Though transnational in the traditional sense, the concept of ethnic justice, as a background system of values and ideas of justice is not necessarily inclusive when it comes to issues of social distribution. On the contrary, it is only externally (though

¹⁸ Jo Shaw, ‘Citizenship as a Space of Law’, manuscript, 2012.

¹⁹ Bauböck, ‘The Rights and Duties of External Citizenship’, 2009.

selectively) inclusive but internally exclusive. While simultaneously including some non-resident co-ethnics in the distribution of political power and social services, it excludes (sometimes directly, but mostly through indirect discouragement practices) some resident non-ethnics from both, on the basis of their 'alien' identity. This practice has been prevalent in cases of overlapping citizenship regimes at particular points in all these countries' histories, especially in the early and mid-1900s, when exclusive ethnic policies reached their peak. For example, in the early years of independence, Croatia systematically excluded resident Serbs from participating in the political and social life of the Croatian state. First, it had *de facto* disenfranchised the Serbs from Krajina, who fled Croatia after its military actions in 1995, by requiring them to produce legal documents confirming their Croatian citizenship (conferred on them automatically through legal continuity with Croatia's republican status within Yugoslavia), which prevented them from utilizing particular social and civic rights.²⁰ Second, through successive legislation in 1995 and 1999, Croatia practically diminished the political participation of Serbs in the representative institutions of the state, but also excluded around 200,000 of Croatian Serb refugees from the ballot.²¹ Though there has been some reversal of such exclusive policies since the end of the Tudjman rule in Croatia, minority representation is still only a minor portion of what it would have been had exclusionary practices not taken place. Although not externally inclusive towards co-ethnics in the region for strategic and political reasons, the Serbian political elite during the Federal Republic of Yugoslavia made significant efforts to exclude internal minorities from both social and political power and benefits. This was especially the case in Kosovo, where the majority Albanian population faced daily discrimination and was denied the rights and benefits their Serb co-citizens freely enjoyed.²²

Simultaneously with internal exclusion, broad arrays of practices "inviting"²³ co-ethnics from its diaspora and the region to participate in sharing political power and social resources have been put into place. Croatia led the way with legislative provisions enabling the participation of its diaspora in national elections, the result of which allowed for more parliamentary seats for Tudjman's governing party. The law from 1995 "set up a fixed number of representatives for the parliament, elected on a separate electoral unit and on a separate electoral list. The electoral corpus of Croatia was increased by about 10% and the 'Diaspora' was thus awarded 12 seats in the Sabor."²⁴ Although the legislation was later changed (in 1999) so that representation reflected voter turnout rather than having a fixed number of Diaspora seats in the

²⁰ Ragazzi and Balalovska, p. 9.

²¹ Ibid.

²² Gezim Krasniqi, 'Citizenship as a Tool of State-building in Kosovo: Status, Rights and Identity in the New State', *CITSEE Working Paper*, 2010/10, University of Edinburgh, School of Law, p. 8-9, Also, see Rava, 2010 and Jelena Vasiljevic, 2011.

²³ Igor Stiks, 'From Disintegration to European Integration: Nationality & Citizenship in Former Yugoslavia', *Southeast European and Black Sea Studies*, Vol. 6, Issue 4., 2006, pp. 483-500.

²⁴ Ragazzi and Balalovska, p. 9.

parliament, the practice of diaspora voting continued to have a significant effect on the election of representatives and national leaders in Croatia. Finally, due to the unpopularity of external voting in Croatia, the number was fixed at 3 representatives by constitutional changes in 2010.

The distribution of political power across the territorial boundaries of the post-Yugoslav states is only one side of the practice of overlapping citizenship regimes. Though rarely treated as a topic of interest *per se*, practices of social distribution constitute a particularly interesting and relevant area. As in the case of political power, it follows the ethnic lines of justification and manifests along inclusion/exclusion parameters based on the concept of ethnic justice. However important, formal citizenship is only one side of the coin here. Distributive overlap is also very often framed through quasi-citizenship policies and practices. In some cases, the boundary between the two is blurred, mainly because the principle of ethnicity is the key denominator that determines the scope and nature of transnational distributive practices. In any case, charting the relevant policies and examples in the Dayton triangle is analytically important for understanding the myriad relations between countries in post-Yugoslav space that render this region an example of distributive interconnection and integration. The next section will outline some patterns of these practices.

4. Citizenship and Overlapping Social Distribution

4.1. Legal Frameworks

In contemporary Serbia and Croatia, the scope of state obligations towards individuals it sees as its bodily constituents is determined through post-territorial understanding of the national community. Given the primarily ethnic and cultural definition of these respective nations as belonging to Serb and Croat people respectively, such a setup is hardly surprising. What is surprising, however, is the degree to which national states are perceived and conceptualized as guarantors of the symbolic and factual unity of a trans-territorially determined national community. This is decipherable from the existing legal frameworks that have been established to guide political and social practice. In this sense, Croatia has been more advanced, given its political priorities during the independence process and the role of the diaspora in it, but as of recently Serbia is catching up in establishing practices that link the national homeland with members of the nation abroad.

Unlike Croatia and Serbia, Bosnia and Herzegovina does not have comparable legal frameworks to determine the scope of obligations toward its citizens in the neighborhood. There are several reasons for this. First, there are simply no comparable cases of residents of Croatia and Serbia who have acquired Bosnian citizenship solely on the basis of their ethnicity because no citizenship law in Bosnia and Herzegovina since 1992 has provided for such an opportunity. Unlike Croatia

and Serbia, BiH never had a state-driven policy to expand its pool of citizens into the surrounding region. The majority of Bosnian citizens living in Croatia and Serbia and possessing dual citizenship migrated to these countries during the 1990s, and most are of Croat or Serb origin respectively.

Second, the (geo)political position of Bosnia is such as to prevent its significant involvement into the internal politics of neighbouring countries, even if her own citizens were concerned. Croatia and Serbia are signatories of the Dayton Peace Agreement, which gives them the power and justification to interfere in the internal developments of BiH to a certain degree. However, the Agreement has not granted BiH with reciprocal powers, so there is no international legal and political grounding for such practice. Second, BiH's dependence on the consensus of internal (ethno-)political powers prevents crystallization of any similar policy, because local Croat and Serb political stakeholders in most cases reject any attempted assertion of Bosnia's political power towards neighbouring Croatia and Serbia, countries they consider their national homelands. Finally, BiH's economic resources are comparably weaker than those of Serbia or Croatia, so any policy that aims to distribute social services and wealth beyond its administrative borders is considered irrational.

Most of the reasons outlined above could also be used to explain the general inertia of Bosnia's legal and political system towards the overlapping social distribution. Therefore, in this triangle of countries sharing peoples and (some) social resources, Bosnia and Herzegovina is largely a passive player, whose legal, political and social system does not actively participate in trans-border political and distributive practices. This is the sole reason why the section on legal frameworks of overlapping distributions discusses in detail only the cases of Croatia and Serbia.

4.1.1. Croatia

Although targeting Croats abroad and those in the region from the early nineties through favorable citizenship laws, only in May 2011 did the Croatian government issue an official document entitled "The Strategy for Relations between the Republic of Croatia and Croats Abroad". This document specifies not only the duties and obligations of the state of Croatia to Croats living outside of the republic, but also the justification behind them. The basic premise behind this strategy is that

all Croats, regardless of their residence and status, are members of one and indivisible Croatian nation.²⁵

The strategy has served as a baseline document for the establishment of institutional and legal tools aimed at defining and normatively framing Croatia's support for members of the nation abroad. Soon after the strategy was adopted,

²⁵ The document is available at: <http://www.mvep.hr/custompages/static/hrv/files/110509-Strategija-prema-Hrvatima-izvan-RH.pdf>

legislators enacted the Law on Relations of the Republic of Croatia towards Croats Abroad.²⁶ The Law precisely specifies who are its main ‘targets’: a) Croats in neighboring Bosnia and Herzegovina; b) Croatian minorities in European states; and c) Croatian expatriates overseas. It however makes a further specification by stating that the Law applies to three different categories of Croats: a) individuals holding Croatian citizenship; b) individuals holding the status of “Croats without Croatian citizenship”; and c) Croats holding neither citizenship nor the status of “Croats without Croatian citizenship. Article 4 repeats the notion of an indivisible nation that all Croats outside Croatia are members of, while article 6 goes further by specifying that taking care of Croats abroad is a constitutive part of both Croatian domestic and foreign policy.

The Law also establishes the state institution in charge of applying the law and providing support to Croats abroad in accordance with the Law’s provisions. Among other things, the duties of this institution are to support the economy and “sustainable survival” (art. 13) of Croat ethnic communities in neighboring countries of the former Yugoslavia, including Croats in Bosnia and Herzegovina who are at the same time constitutionally defined as one of three “constitutive peoples” of that state and therefore strictly speaking cannot be seen, regardless of their number, either as a minority in Bosnia or as Croatia’s diaspora, as well as Croat minorities in Serbia, Montenegro, and Kosovo. However, given that the law was adopted by a conservative HDZ government, which was ousted from power at the 2011 parliamentary elections in Croatia by the social democrats (SDP), the provisions of the law have not been implemented so far.

4.1.3. Serbia

Serbia’s relations towards “Serbs in the region” as they are officially called by Belgrade, including those in Bosnia and Herzegovina’s Republic of Srpska, are defined through an agreement between Serbia and the Republic of Srpska (RS), originally signed between FRY and RS in 2001, but renewed in 2006, after Serbia and Montenegro split. The agreement comes at the top of a provision of the Dayton Constitution (art. 2 and 3), under which Bosnian entities can establish special relations with (neighbouring) states and international organizations, pending permission of the state parliament. However, given the loose (and sometimes symbolic) function of the agreement on special relations, there arose a need to define the scope of Serbia’s obligation to Serbs in Bosnia and Herzegovina more specifically. Driven by this demand, as well as by interests in institutionalizing closer relations with Serbs in neighbouring countries, most notably Montenegro, the Serbian parliament adopted the Law on Diaspora and Serbs in the Region in October 2009²⁷,

²⁶ The text of the law is available at: <http://www.zakon.hr/z/507/Zakon-o-odnosima-Republike-Hrvatske-s-Hrvatima-izvan-Republike-Hrvatske>

²⁷ The text of the law is available at: http://www.mzd.gov.rs/download/dokumenti/ZAKON_ZOD.pdf

which similarly to the Croatian one, defines Serbia as the homeland of all Serbs, irrespective of their residence, but also specifies a set of state obligations and duties to its expatriate constituents. The Law recognizes two main categories of 'beneficiaries': "Diaspora Serbs" and "Serbs in the region". Article 2 of the Law defines Diaspora Serbs as: a) citizens of the Republic of Serbia who live abroad; and b) descendents of Serb expatriates; By "Serbs in the region", it defines all Serbs who live in the regional countries of Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Macedonia, Romania, Albania, and Hungary.

One of the main functions of the Law on Diaspora and Serbs in the region is sustaining and strengthening the links between the Serbian diaspora, Serbs in the region and Serbia as their homeland state. According to the Law (art. 4), this should be achieved, among other things, through the establishment of a budgetary fund to support both diaspora Serbs and Serbs in the region. Article 5 is more specific in stating that funds for sustaining and strengthening links between the homeland of Serbia and its constituents should be secured through the state budget. This is to be achieved through public competition for funding of the projects of non-governmental organizations aimed at the strategic goals the Law has defined.

The legal frameworks in both cases provide legitimacy for different acts of the respective states related to provision of support to their diasporas and co-ethnics in the region. Some of these are specified through different provisions of the law, but many others are not. Given the broad definition of "sustaining and strengthening links" between homelands and their co-ethnics abroad, as well as securing "sustainable survival" of neighbouring co-ethnic communities, a whole range of practices may be included. Some of them may be tied to citizenship status, others may not, but the purpose and rationale of such practices is unequivocal: post-territorial politics and transnational agency of nationalizing states. The following sections will try to map four domains in which these policies shape social distributive practices, thus inviting a normative assessment from the perspective of a minimalist theory of justice.

4.2. Education

The countries of the former Yugoslavia used to share a single pool of cultural and educational exchange. Irrespective of their republic of birth or residence, Yugoslav students could choose their place of study based on academic interests or institutional prestige. However, with the dissolution of Yugoslavia, the educational policies and access to educational institutions changed significantly. In most cases, students from other former Yugoslav republics are treated as foreign students and therefore subject to high tuition fees. The exceptions to this rule are, however, particularly telling and indicate prevailing views on distributive justice.

For example, provisions from the agreement on special relations between Serbia and the Republic of Srpska enable students from the Republic of Srpska, who possess entity citizenship to study at Serbian universities under the same conditions

as citizens of Serbia, while citizens of the other Bosnian entity, the Federation of Bosnia and Herzegovina (FBiH) are denied such benefits and are treated as foreign students, regardless of their Bosnian citizenship, common to citizens of both entities. An exception is made, however, in cases when citizens from FBiH are of Serb ethnic origin. For them, the same rules as in cases of citizens from the Republic of Srpska are applied.²⁸ This means that, in certain cases, formal citizenship (entity or state) can be legally disregarded in determining the scope of social distribution. Such cases indicate that citizenship is very often taken as merely an ideological and political instrument of ethnic favoritism that works well in some circumstances, instead of a prime legal basis for acquisition of a set of entitlements. The case of Serbia also shows the relation between formal citizenship and ethnizenship: where formal citizenship is absent (or until it gets operational)²⁹ ethnizenship takes over the role of inclusion of co-ethnics in the schemes of distribution.

Unlike Serbia, Croatian schemes of social distribution rely much more on formal ties of citizenship than informal ethnic memberships. This is reflected not only in distributive practices, which are more tied to formal than informal belonging, but in the nature of overlapping citizenship projects, which at times have granted citizenship to a large portion of ethnic non-Croats.

Under the Croatian Law on Relations of the Republic of Croatia towards Croats abroad, holders of dual citizenship of Bosnia and Croatia are entitled to educational benefits on a par with resident Croatian citizens. No similar benefits are provided to other citizens of Bosnia and Herzegovina or of other countries in the region. They are treated as foreign students, with corresponding regulations applying in terms of studying, fees, quotas and other related issues.

In addition to the provision of educational benefits in Croatia, the Croatian government has invested a significant amount of resources in the establishment and development of Croat educational institutions in Bosnia and Herzegovina, especially the Croat-dominated University of Mostar, in Herzegovina. Funds for support of Croat educational institutions in Bosnia are a regular provision in Croatia's annual state budget. In 2011, the government of Croatia allocated more than 800,000 Euros to support such educational projects.³⁰ The money went to 159 different educational institutions, mostly in areas of Bosnia and Herzegovina where Croats form the majority, but also to some minority-status organizations and institutions, on the pretext of their Croat ethnicity or Croat citizenship. The type of beneficiaries ranged from university departments to primary schools and kindergartens.³¹

²⁸ See 'Odnosi izmedju Republike Srbije i Bosne i Hercegovine: definisanje nove politike', *Evropski pokret Srbija*, Beograd, 2011, p. 9. Also, a news article at <http://www.dw.de/dw/article/0,,15637591,00.html>.

²⁹ Judging by the Serbian case, ethnizenship is merely an incipient stage of inclusion that has a tendency to develop into full formal citizenship.

³⁰ The government act is available at: <http://ba.mvp.hr/?mh=141&mv=4283>.

³¹ The entire list is available at: <http://ba.mvp.hr/CustomPages/Static/HRV/Files/111118-obrazovanje-znanost.pdf>.

4.3. Health

In keeping with its approach to education, the government of Croatia allocates funds to support Croat health institutions and organizations in the region, where Bosnia and Herzegovina plays a particularly important role. In 2011, the amount was estimated to be as high as 200,000 Euros, and was donated mostly to local health centres and various non-governmental organizations focusing on health and social provisions, from demobilized members of the war-time Croat armed forces in Bosnia (HVO) and disabled soldiers' centers to anti-alcoholism clinics.³²

In addition to assistance to Croat health facilities in Bosnia, Croatia provides many other health benefits to its non-resident citizens. Among these are benefits to young mothers, both employed and unemployed. Given that Croatian citizenship is one of the requirements for acquiring the right to such benefit, many Croat citizens permanently residing in Bosnia and Herzegovina attempt to make use of the benefit. However, other provisions require a three-year residence in Croatia prior to the baby's birth, and registration at a local unemployment centre at least 12 months before delivery. Given the relatively high amount (compared to the standard of living in Bosnia and Herzegovina) of the allowance for unemployed young mothers (more than 200 Euros), it has been a frequent occurrence that young couples, holding dual citizenship and living in neighbouring areas of Bosnia, apply for residence in communities across the border and give birth to their babies in Croatia so they can utilize this benefit. Some data indicate that in only one of the bordering Cantons of the Federation of Bosnia and Herzegovina, in the first three months of 2012 there were 26 cases of local residents' giving birth in Croatia and then returning to live in Bosnia and Herzegovina, while keeping the social benefit.³³ Of course, no systematic analysis of such practices is available, though some estimates say that there are more than one hundred such cases every year.

Given the difficult economic situation in Bosnia and Herzegovina and the lack of social provisions for different categories of people, such practices are not surprising. However, the new Croatian Law on Residency might affect the scale of such practices, since it introduced more stringent measures to control and punish dual residencies, which are often used not only for acquiring health benefits, but also for electoral fraud, since it has enabled a number of individuals to vote two or more times at the national elections in Croatia.³⁴

³² The entire list is available at: <http://ba.mvp.hr/CustomPages/Static/HRV/Files/111118-zdravstvo.pdf>.

³³ The information is available at: <http://www.livno-online.com/zupanija/11779-zbog-naknada-i-drzavljanstava-bh-zene-radjaju-u-hrvatskoj>.

³⁴ 'Novi zakon za čišćenje biračkih popisa: kazne za fiktivne prijave prebivališta 3,000 Kuna', *Jutarnji list*, 15.05.2011, also available at: http://www.jutarnji.hr/kazne-za-fiktivne-prijave-prebivalista-3000-kuna/946024/?keepThis=true&TB_iframe=true&height=600&width=800.

4.4. Culture

The overlap of social services and financial allocations is most explicit and straightforward in the cultural domain. Though Serbia's budgetary fund for support of cultural activities of Serbs in the region, envisaged by the Law on Diaspora and Serbs in the Region, is still under development, some minor funds are available for various cultural activities. These are allocated through Serbian embassies and other consular offices throughout the region. However, given the Law's provision of a specific budgetary fund, more support to different cultural activities is to be expected in the coming years.

Unlike the still ill-defined Serbian cultural assistance to Serbs in Bosnia, the portion of funds the Croatian government allocates to Croats in Bosnia and Herzegovina is not only well specified, but also larger than the funds for health and education. In 2011, the fund amounted to more than one million Euros, and was given to different cultural institutions, from Franciscan museums and monasteries to various non-governmental cultural organizations and libraries. In 2011, 180 cultural institutions and organizations benefited from the allocated funds.³⁵

4.5. Military Retirement Funds

A particularly interesting domain where social benefits between countries in post-Yugoslavia go beyond state borders (and the usual means of justification) is the area of military pension funds. Under the pretext of fighting against a common enemy – the Yugoslav National Army and local Serb rebels – the Croatian state promised to support the fighters of the Bosnian Croat armed forces, the Croatian Defense Council (Hrvatsko vijeće obrane, HVO). The obligation acquired a form of a bilateral agreement between Croatia and Bosnia and Herzegovina enacted in July 2006, which stipulated provision of pension funds for disabled members of the HVO who are holders of Croatian citizenship, and for the families of the fallen Croat soldiers.³⁶ The latest statistics indicate that there are 6,803 individual recipients of these benefits. In 2010, the average pension allowance for a member of the HVO amounted to approximately 315 Euros, the same as for a member of the regular Croatian Army.³⁷

The annual budgetary provisions for these practices are high, at least compared to other social benefits and provisions in Croatia. No detailed breakdown

³⁵ The entire list is available at: <http://ba.mvp.hr/CustomPages/Static/HRV/Files/111118-kultura.pdf>.

³⁶ See the Croatian State Pension Fund report for 2010 (Izviješće o poslovanju Zavoda za mirovinsko osiguranje Republike Hrvatske za 2010. godinu), page 11. Available online at: http://www.mirovinsko.hr/UserDocsImages/upravnovijece/sjednice/35_29062011/izvjesce_o_radu_i_poslovanju_Zavoda_2010.pdf

³⁷ See the Croatian State Pension Fund report for 2010 (Izviješće o poslovanju Zavoda za mirovinsko osiguranje Republike Hrvatske za 2010. godinu), page 2. Available online at: http://www.mirovinsko.hr/UserDocsImages/upravnovijece/sjednice/35_29062011/izvjesce_o_radu_i_poslovanju_Zavoda_2010.pdf

and analysis, however, is available. But some data may serve as an indicator of the scale of such provisions. For example, in 2009, Croatia allocated around one million Euros to provide military pensions to HVO members in neighboring Bosnia and Herzegovina. Critics argued that the cost of this social service was too high, since in the same year, the investment in building new facilities of the Croatian education system had been around eight times smaller.³⁸

4.6. The Rationale: Explanatory Frameworks

The question of the rationale of such distributive overlap in the post-Yugoslav triangle of Croatia, Bosnia and Herzegovina, and Serbia, is an intriguing one. Especially in the context of the economic fragility of the former Yugoslav states, all of which had to go through a difficult transition from planned to market economy, encountering a number of economic and distributive problems, one might wonder what drives policies of such economically fledgling societies and highly indebted countries, to expand the scope of their national expenses beyond the boundaries guaranteed by the existing international order.

The phenomenon may be explained through three different theoretical frameworks. Taken in isolation, each framework may not offer a comprehensive understanding of the phenomenon, especially its normative dimension, but each may reveal some facts about the character of different national and state policies and indicate in what way normative considerations could be beneficial and successful. Taken together, they provide a more nuanced and informed picture about the reasons and rationale of social distribution policies in the post-Yugoslav space.

The first framework uses Brubaker's triadic configuration of national minorities, nationalizing states and external national homelands³⁹ to provide a rationale to these practices. From such a perspective, the provision of social benefits and rights is just an extension of the already existing practice of extending the invitation to citizenship nationalizing states undertake to broaden their influence in the region and gain power through support to co-ethnics in the neighboring countries. This framework shows the different degrees to which Serbia and Croatia manifest traits of a 'nationalizing' state. As already indicated, given the different (geo)political positions and priorities of these states, Croatia has behaved more as a nationalizing state than Serbia when it comes to the scale of financial assistance for its co-ethnics in Bosnia and Herzegovina, and the extension of different social benefits. However, given certain legislative changes in Serbia, especially the amended Law on Citizenship and the enactment of the Law on Diaspora and Serbs in

³⁸ See Jutarnji List, 'Za mirovine HVO-a dajemo osam puta više nego za nove škole', 02.09.2009, also available at: <http://www.jutarnji.hr/za-mirovine-hvo-a-vlada-daje-dvostruko-vise-nego-za-djecu-invalid/308415/>.

³⁹ Rogers Brubaker, 'National minorities, nationalizing states and external national homelands in the new Europe', in *Nationalism Reframed: Nationhood and the National Question in the New Europe*, Cambridge University Press, Cambridge, 1996, p. 55.

the Region, Serbia appears to be heading in a similar direction, indicating that ethnizenship in this case ultimately ends in formal citizenship. However, since the laws have been relatively recently adopted, it is still unclear to what extent Serbia's nationalizing policies will develop. It may be indicative of its attempts that no data showing the numbers of Bosnian citizens of Serb origin (both from the Republic of Srpska and the Federation of Bosnia and Herzegovina) who applied and acquired Serbian citizenship under the new law is available. For the Serbian diplomatic authorities, this remains strategic information they are unwilling to make public.

The second framework takes notions of post-territorial politics as the key benchmark for assessing the different characters of the distributive policies in this region. This framework aims to explain the overlap of citizenship regimes and social distribution policies by pointing to population, instead of territory, as the new object of nationalizing politics.⁴⁰ It is congruent with Brubaker's triad, but adds a new layer of understanding to the relation between different political actors and the objects of their agency. This too shows some differences between Serbia and Croatia in terms of the rationale behind their social policies' overlap in Bosnia and Herzegovina. While Croatian practices attach themselves to no particular institutional anchor in Bosnia, given the particular position of Croats within the Federation of BiH, Serbian ones go through the institutions of the Republic of Srpska in realizing their aims. To a large extent this is framed through the agreement between Serbia and Republic of Srpska on parallel and special relations. This, however, does not necessarily say much about the different character and rationale of Serbia and Croatia's social policies, but may indicate future developments and the role of a particular territorially-determined object of these policies. As a territorially-defined expression of Serb national interests in Bosnia and Herzegovina, the Republic of Srpska is much more prone to remain a territorial object of political interest, and a nationalizing agency of Serbia than is the case with Croatia in relation to Bosnian Croats. In that sense, Croatia's attempts to support its co-ethnics in the region is indicative of a much more post-territorial approach to strategic policy aims. The third framework builds upon Nancy Fraser's analysis of the relations between redistribution and recognition in the modern age.⁴¹ According to this framework, contemporary claims to social justice are distinctively divided between economically-centered redistribution and culturally-centered recognition. However, in the late 20th and early 21st century, claims to recognition started to predominate.

The discourse on social justice, once centered on distribution, is now increasingly divided between claims for redistribution, on the one hand, and the claims for recognition, on the other. Increasingly, too, recognition claims tend to predominate. The demise of communism, the surge of free-market ideology, the rise of 'identity politics', in both its fundamentalist and

⁴⁰ Ragazzi and Balalovska, 2011.

⁴¹ Nancy Fraser, 'Social Justice in the Age of Identity Politics: Redistribution, Recognition and Participation', *The Tanner Lectures on Human Values*, Stanford University, 1996.

progressive terms – all these developments have conspired to decenter, if not to extinguish, claims for egalitarian redistribution.⁴²

This framework might partially answer the puzzling question of why economically-challenged countries venture into social investments beyond the borders of their territories and initial constituencies. From this perspective, what drives such distributive acts is the implicit understanding that recognition, as the social and political emphasis on culture as the site of justice, should drive redistributive schemes. In this sense, cross-border redistribution is just an expression of recognition, or the need to have the identity of co-ethnics in the neighborhood recognized, supported and promoted. It thus reduces all questions of redistribution to its assumed cultural rationale, placing an emphasis on recognition as the ultimate political tool for generating preferred social justice arrangements. This may hinge on the recent surge in identity politics, as Fraser indicates, but it may also simply be attached to a particular understanding of the nation – not as a civic or political community, but a community of sentiment organized around particular features of culture and tradition. According to the visions of nationalizing states' policy makers, the cultural dimension is more fundamental than the economic.

Out of these three explanatory frameworks, only the latter one is normatively disposed, in terms of containing elements for the development of a framework for appraising the existing practices and suggesting proposals for new ones. The last part of this paper will be focused on developing and discussing such a framework.

5. Social Justice for Post-Yugoslav states: Outline of a Normative Framework

There are three aspects of the potential normative response to the practices described and analyzed in this paper. They refer to different dimensions of the phenomenon and offer a specific set of normative proposals for policy regulation. Additionally, in terms of critical assessment of the existing policies, they indicate elements of injustice in the existing patterns of social distribution.

5.1. Recognition *and* Redistribution: Equality and Rationality

The first one leans on Fraser's normative outline that emphasizes the need for a balanced approach in which both socio-economic and cultural elements will be equally relevant and present. What is in that sense required is a "bivalent" conception of social justice, which

encompasses both distribution and recognition without reducing either one of them to the other. Thus, it does not treat recognition as a good to be distributed, nor distribution as an expression of recognition. Rather, a

⁴² Fraser, 1996, p. 4.

bivalent conception treats distribution and recognition as distinct perspectives on, and dimensions of, justice, while at the same time encompassing both of them within a broader, overarching framework.⁴³

This proposal argues that the existing practices of social justice in the post-Yugoslav space are skewed in support of recognition's dominance over redistribution are normatively inappropriate as systems of social distribution. The reason why this is the case lies in the value and normative core of the bivalent conception of justice. The normative core of such a proposal is what Fraser terms the "parity of participation", which

requires social arrangements that permit all (adult) members of society to interact with one another as peers.⁴⁴

Clearly, the existing practices prevent all members of different societies in post-Yugoslav states from interacting with one another as peers because of the power imbalance that provides some with more political power and social benefits than others. What this means is that holders of dual citizenship (or co-ethnics endowed with quasi-citizenship rights and benefits) are comparatively better-off than their co-citizens in both countries of their citizenship, due to multiple opportunities for utilization of political power (through the ballot) and different socio-economic benefits, from education to health and pension systems. For example, the overlap of military pension systems between Bosnia and Herzegovina and Croatia results in double benefits for individual beneficiaries, former HVO combatants, who might use both Croatia's funds for support to HVO and Bosnia's internal military pension system simultaneously. This creates a social misbalance and inequality between members of different armed forces within one socio-political system in the country (the entity of FBiH), generated simply by the recipients' ethnicity and the corresponding choice of armed force during the war. The parity of participation is also violated not just in one, but in multiple ways. Posited against the status and benefits of Croatian resident citizens, the individuals from the military pension example are unjustifiably favored by having two sources of social benefit for a single purpose while contributing reciprocally (in terms of taxes or other forms of reciprocity) to only one socio-economic system.

Clearly, such an arrangement not only violates norms of parity in participation and equality, but also fails to correspond with basic forms of socio-economic rationality. What this calls for is the establishment of a single, or at least more coordinated, system of information and allocation of social benefits that will take the norm of parity in participation and individual equality at the core of the system of social allocation. The violation of equality and parity is what makes such a system normatively inappropriate and subject to possible reform. But the economic

⁴³ Fraser, 1996, p. 30.

⁴⁴ Ibid.

non-rationality of the existing practices as well as the widespread financial crisis in Croatia and Serbia – recognized through some efforts at curbing the dual residency and health benefits phenomenon – can also be among the reasons for change.

5.2. Beyond Citizenship: Regional (Scope of) Social Justice?

The second dimension of the normative framework that could be appropriate to amend existing non-egalitarian practices pertains to both theoretical and practical relations between citizenship and the scope of justice. Since the recent philosophical literature suggests that, given global forms of reciprocity, manifested through interconnectedness in terms of cooperative, coercive and effectual networks, there are reasons to consider the scope of global justice, similar arguments can be applied in the context of the post-Yugoslav space. If these reasons hold for this region, in which there might presumably be even more reciprocal relations of cooperation, coercion and mutual influence, there are sufficient arguments to appraise justice-based distributive practices not only in the national, but also in a regional context. Taken as such, social distributive practices in the post-Yugoslav space are transnational in a territorial sense, but not necessarily inclusive and sensitive to forms of reciprocity between citizens of different countries of the region. Their transnationality is merely formal and inconsequential for theoretical argumentation of this kind because it is constrained by a post-territorial tool of nationalizing politics – i.e. citizenship. Had these practices been attached to any of the existing forms of reciprocity, they would have satisfied the norms and values of an inclusive global justice. But, given that they hinge on the citizenship status allocated to co-ethnics in another country, without any other determinate reciprocal requirement, they fail to correspond with one of the most important dimensions for defining the scope of justice.

This would imply that the existing practices, in which forms of reciprocity – such as taxes, social services, and citizens' duties – remain national (defined by citizenship plus residency), but redistribution goes beyond national borders on the basis of recognition of co-ethnics in the region, are incoherent and unjust. If the basis of social justice is dual, encompassing both the identity of the individuals included and the forms of reciprocity between all members of the community, then justification of social distribution practices based only on one of these dimensions is incomplete and generates injustice.

In terms of a normative policy proposal, two potential avenues stand out. The first one is to retreat to the traditional understanding of the scope of justice and limit it to the domain of a territorially-defined national community. This would mean limiting the scope of social distribution to boundaries of the reciprocal community, rather than extending it to forms of political membership that do not necessarily require relations of reciprocity, such as citizenship of co-ethnics in a neighboring country. The second one is to push forward for cross-border redistributive practices that are not tied to citizenship and the co-ethnic status of populations in the region,

but to existing forms of reciprocity between people from different states, such as cooperation in production, the pervasive impact of particular institutions or coercion by the same regional or global institutions. Whichever avenue for policy solution is chosen, it will foster more egalitarian practices of social distribution in the region and curb the existing inequalities as well as discrimination on ethnic grounds. However, given the increasing interconnectedness and mutual dependence of the countries of the region, the second avenue seems more plausible, both in principle as well as in practice.

5.3. Against Arbitrariness

Since non-arbitrariness was outlined as the main element for describing a minimalist definition of justice, assessment of the current social distributive practices against this element is of crucial importance. In this regard, it seems obvious that the existing forms of distribution violate the minimal requirement of justice since the scope of justice is defined through arbitrary notions of ethnicity. As a non-chosen identity, ascribed to individuals on the basis of the accident of their birth in a particular place and within a particular tradition and family, ethnicity is purely arbitrary, and according to most of the arguments for understanding justice, it cannot serve as a rationale for limiting the scope of social justice.

The scope of distribution, in most cases, is formally determined through the extension of citizenship. But, in cases when citizenship is extended to individuals exclusively on the basis of their ethnicity, and not their “stakeholdership”, residence or circumstances of life, it is also arbitrary, and thus has the same moral value as ethnicity. This means that, in some cases, formal belonging of individuals to a certain state cannot be used as a sufficient justificatory mechanism to extend a set of social entitlements and benefits, because it is based on the arbitrary fact of their ethnicity.

However, in the triangle of Croatia, Bosnia, and Serbia ethnicity has been taken as a primary element for provision and acquisition of citizenship and the corresponding social benefits. Given so, an alternative normative proposal would need to disentangle the arbitrary facts associated with ethnicity from patterns of social distribution. As with the question of scope, social redistributions are more appropriate and justifiable when connected to actual forms of reciprocity and egalitarianism than when associated with ethnicity as an arbitrary fact. This, however, does not mean that all forms of such arbitrary facts are irrelevant for justice. There are arbitrary facts that mandate inclusion into the scope of redistribution and even allocation of asymmetric benefits. These facts are usually the ones associated with some forms of disadvantage, such as bodily handicaps and some minority statuses. In these cases, the inequality of outcomes in terms of benefits is justifiable, and can in some cases include ethnicity as a fact – but only when this fact renders individuals and groups disadvantaged on some basis. If it is the case that some ethnic groups and individuals are disadvantaged and require acts of positive discrimination, this fact is then assessed comparatively against other similar groups

and individuals disadvantaged on other grounds than ethnicity. Only if shown that facts of ethnicity make individuals comparatively worse off, then ethnicity will deserve a special distributive treatment. Otherwise, tying distribution to arbitrary facts of ethnic identity generates social injustice.

6. Conclusion: Citizenship and Forms of Social Injustice

Clearly, the citizenship and quasi-citizenship status of certain groups in the triangle of Croatia, Bosnia, and Serbia, has an impact on the nature and quality of practices of social redistribution. Because it has been provided and acquired on the basis of ethnicity, which is itself an arbitrary fact individuals cannot normally choose, allocating social benefits to individuals solely on this basis, seems to violate some of our basic intuitions and understandings about justice. These intuitions underline the two most important facts about justice, in its minimalist understanding – the non-arbitrariness in terms of substance and reciprocity in terms of scope. Any social distribution that infringes these minimal requirements will be considered unjust.

In more precise terms, the minimal requirements of justice indicate the two main forms and directions of injustice generated by the nexus between citizenship and social distribution in the post-Yugoslav space. The first form generates injustice in terms of reciprocity, and is directed from non-resident holders of dual citizenship to their resident co-citizens in the 'homeland' country who contribute to the total generation of wealth through different patterns of reciprocity, such as paying taxes, pension and health insurance and similar. Basically, while only one group of people pays taxes, another benefits without contribution. Provided that holders of dual citizenship are not a severely disadvantaged minority, in this form the resident co-citizens are unjustifiably disadvantaged, because they contribute to the generation of wealth that is then redistributed beyond the initial pool of contributors. The ethnic identity of the individuals outside the contributing pool, apart from cases of severe disadvantage, cannot serve as a justification for the redistributive spill-over. It violates not only the non-arbitrariness requirement of justice, but is also socio-economically non-rational.

The second form generates injustice in terms of arbitrariness more specifically, and is directed from holders of dual citizenship to their co-citizens in their common, resident country. By the arbitrary fact of their ethnic identity, holders of dual citizenship are entitled to social benefits from two different countries, while contributing only to one. This leaves resident co-ethnics disadvantaged in a certain sense, since it tips the balance of social (and political) power in favor of individuals and groups possessing traits that should be normatively irrelevant for social justice.

Any alternative policy regulating social justice in the 'Dayton triangle' space should either limit the scope of distribution to communities of reciprocity, or take the entire region, encompassing not only the countries selected as cases in this paper, but others as well, as a unified basis for creating adjusted and coordinated distributive

policies. Being more plausible and normatively desirable, the latter would mean that instead of “taking a single polity as our exclusive frame of reference, we need to focus on *constellations* of polities to which groups of individuals are linked through multiple and shifting ties”.⁴⁵ In any case, a more just system of benefit distribution in this region should imply a tighter cooperation between state institutions of different countries, so the overlap of some forms of membership, such as citizenship, does not necessarily drive the overlap of benefits. This is a practical matter that hinges not only on scholarly research and policy development, but also on the political will of policy makers and leaders of the region.

The aims of this paper have, however been more modest and focused primarily on pointing to the fact that the overlap of citizenship regimes in countries of the former Yugoslavia deserves not only empirical, but also normative attention. The paper aimed to show that one can analyze this phenomenon from the perspective of social justice and pose legitimate questions about the justifiability of certain practices associated with overlapping citizenship regimes. In that sense, this entire discussion has been more of a suggestive than conclusive nature. More research and argumentation needs to be made to enable many other dimensions of these practices to be brought to light and normatively assessed. My only hope is that this paper will open up a debate that will bring us closer to a more enlightened understanding of the multitude of meanings and dimensions of contemporary citizenship policies in the Balkans.

⁴⁵ Bauböck, 2009, p. 492.



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